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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.6541 OF 2005

Smt. Sangita Varma,)
40 years, residing at Flat)
No.2,The Pines Housing Society)
Ltd., Nisargadatta Nagar,)
Jagatap Mala, Nasik Road,)
Nasik-422 101.)..PETITIONER

Versus

1. Union of India through)
the Secretary, Ministry)
of Telecommunications,)
Dept. of Telecommunication)
Sanchar Bhavan, New)
Delhi-110 011)
2.Chief General Manager,)
Bharat Sanchar Nigam Limited)
Maharashtara Telecom Circle)
8th Floor, Fountain Telecom)
Building -II,Mumbai-400001)
3.Mr. N.P.Kawade,)
Presently working as DGM,)
Office of G.M. Telecom,)
Teleplhone Bhavan, Nanded-)
431 601)..RESPONDENTS

Mr. R.G. Walia for the Petitioner
Mr. V.S. Masurkar for the respondents.

WITH

WRIT PETITION NO.7671 OF 2006

The Chief General Manager,)
Bharat Sanchar Nigam Limited)
M.H. Circle)
Fountain Telecom)
Building -II, VIIIth Floor,)
Mumbai-400001)
through District Telcom)
Manager, Dist. Nanded.)..PETITIONER

Versus

1.Smt. Sangita d/o.Bhagwandas)
Warma, Age 45 years,)
Occu. Ex-Employee, Department)
of Telecommunication,)

R/o.Flat No.2, Pines Housing)
Society Ltd., Nisarga, Datta)
Nagar, Jagtap Mala,Nashik)
Road, Nasik-422 101.)
2.Shri N.P.Kawade,)
Age 50 years, Occ.Service)
Deputy General Manager,)
Shrinagar, Jammu-Kashmir)
3.Union of India through)
the Secretary, Ministry)
of Telecommunications,)
Dept. of Telecommunication)
Sanchar Bhavan, New)
Delhi-110 011)..respondents

Presently working as DGM,)
Office of G.M. Telecom,)
Teleplhone Bhavan, Nanded-)
431 601)..RESPONDENTS

Mr. V.S. Masurkar for the Petitioner
Mr. R.G. Walia for Respondent No.1.

CORAM : F.I. REBELLO &
R.V. MORE,JJ.
DATED : 11TH JANUARY, 2007

JUDGMENT (PER F.I. REBELLO, J.)

. Rule. Heard forthwith.

2. Petitioner in Writ Petition No.6541 of 2005 was the original applicant in Original Application No.637 of 2003 which was disposed of on 25th April, 2005. The petitioner in Writ Petition No.7671 of 2006 was the original Respondent No.1 in the Original Application. By consent of the parties both the petitions are taken up and heard forthwith. Pleadings will be considered from both the petitions as also documents as there are some documents which are not common.

3. The petitioner in Writ Petition No.6541 of 2005 will be addressed as the employee and the petitioner in Writ Petition No.7671 of 2006 as the employer.

4. The employee had joined the services of the employer on 9th January, 1986. She was initially posted at Nasik and subsequently came to be transferred at Nanded. The employee by her letter dated 15th December, 1999 addressed to the Telephone District Manager submitted letter of resignation on the ground that she was receiving threats from anti social elements and was unable to attend duties. The said resignation was accepted and the name of the petitioner was ordered to be struck off with effect from 31st December, 1999. It is case of the employee that on 29th December, 1999 she had sent a letter withdrawing her resignation and it was received on the same day. The employee was informed by the employer that the letter dated 29th December, 1999 was received on 3rd January, 2000 and it was not possible to accept the employee's letter of withdrawal of resignation. The employee thereafter submitted an application for final payment on the ground that she has resigned, on 6th February, 2001. It was set out therein that it was in conjunction with the earlier letter dated 15th November, 2000. On 27th December, 2000 the employee through her lawyer addressed a notice to the employer pointing out that though she had resigned she had not been paid her gratuity, GPF, Group Insurance, Bonus and other benefits. In this

letter it was mentioned that the employee had been in correspondence with the employer on 28th July, 2000 and 15th November, 2000. On behalf of the employee interest was claimed at the rate of 18% per annum on all the amounts which are due. It is only by another legal notice through her next Lawyer, dated 27th November, 2002 that the employer was informed that the resignation was not made voluntarily, but due to tensions and as the employee realised that under pressure of some anti social elements she has lost her job which was the only source of livelihood and consequently had addressed the letter dated 29th December, 1999 withdrawing her resignation. It was pointed out that acceptance of the resignation by the employer was illegal and without authority of law. As no relief was granted to the employee she filed the Original Application which was dismissed on the ground of delay and laches. That order was challenged before this Honourable Court in Writ Petition No.3561 of 2004. By order dated 22nd June, 2004 the petition was allowed and the matter was remanded to the Tribunal with the direction to dispose of the matter on merits in accordance with law. After hearing the parties the impugned order came to be passed.

5. The learned tribunal after hearing the parties has dealt with the various contentions. The Tribunal firstly held that the resignation cannot be said to be conditional resignation. The learned tribunal then held that the letter

withdrawing the resignation was handed over to the Despatch Clerk by the employee on 29th December, 1999 and that was evidenced by the signature of the Clerk in the Despatch Section. The Tribunal then noted the contention of the employer and held that the letter dated 29th December, 1999 which was received in the office of T.D.M. Nanded on 3rd January, 2000 may be another copy of the letter and that would not mean that the applicant had not handed over the copy of the letter personally in the office on 29th December, 1999 as the xerox copy of the same bears the stamp and signature of the Despatch Clerk of the respondent dated 29th December, 1999. The learned Tribunal further noted that the employee was on earned leave from 10th December, 1999 to 29th December, 1999 which was extended from 30th December, 1999 to 21st January, 2000. After considering these contentions and the decisions by the Government of India the Tribunal held whilst noting the various judgments cited that the order dated 31st December, 1999 accepting the resignation of the applicant is not sustainable in law as it had been withdrawn by the employee on 29th December, 1999. The employer was directed to treat the resignation letter having been lawfully withdrawn on 29th December, 1999 and also treat the employee as in continuous service from 31st December, 1999 from which date her name was struck off from the strength. The further direction was that the employer should treat the employee’s absence from duty during the intervening period as leave of the kind due and admissible

with pay or without pay as the case may be, so that no break in service is caused. The request of the applicant to redeposit the amount which she has received was accepted and accordingly the O.A. was allowed. Both the employee and the employer are aggrieved by the said decision. The employee as back wack wages were not ordered and the employer on account of the order of reinstatement and consequential directions.

6. On behalf of the employee her learned Counsel contends that the order of the Tribunal in as much as it refuses back wages for the period from 29th December, 1999 till reinstatement was without the authority of law and that the employee was entitled to back wages with 18% interest thereon and some consequential directions.

. On the other hand on behalf of the employer their learned Counsel submits that the Tribunal has not recorded a clear finding as to the withdrawal of the resignation. The finding by the Tribunal that another letter has been received in the office of the employer on 3rd January, 2000, it is submitted, is clearly contrary to the record as it was not the case of the employee that apart from the letter which she had personally handed over to the Despatch Clerk any other letter or duplicate copy of the letter had been forwarded to the employer. It is next submitted that the Tribunal did not take into consideration that the employee

accepted the fact of resignation and accepted all the legal dues without demur or protest. Apart from that even the initial notice served on behalf of the employee proceeded on the footing that her resignation has been accepted and the employee was only demanding release of her legal entitlements. The plea raised by Advocate's notice dated 27th November, 2002 that the resignation could not have been accepted as it was given under circumstances when the petitioner was in a disturbed state of mind was an after thought when the petitioner realised that she was not entitled to pensionary benefits. It is submitted that the learned Tribunal has not taken these facts into consideration. For the aforesaid reason it is submitted that the impugned order be set aside and the matter be remanded back to the trial Court.

7. We have earlier noted the findings recorded by the Tribunal. In terms of the record the employee was on sanctioned leave as and upto 21st January, 2000. The letter or resignation did not specify the date on which the employee was resigning. Therefore, under the conditions of service the employer could have accepted the letter of resignation after the period provided under the Rules had expired unless there was a power in the Appointing Authority to waive the period of notice. The employee had had also not agreed to forfeit the wages in lieu of notice. The employer, however, without waiting for the period to expire

accepted the letter of resignation within 15 days of its receipt though at the relevant time the petitioner was on sanctioned leave. The Tribunal proceeded on the basis that the letter of resignation was withdrawn on 29th December, 1999. Yet at the same time recorded a finding that there was another letter received by the employer on 3rd January, 2000. The explanation given is that it must be another letter. It was not the case of the employer either in the Original Application or in the correspondence exchanged earlier that she had sent another copy of the letter dated 29th December, 1999 directly to the employer. It has been her case that she handed over the letter dated 29th December, 1999 personally to the Despatch Clerk, who acknowledged the same. No mention is made of any other letter. There is thus an inconsistency in the findings. The question really would be whether the appointing authority received the letter at the time the resignation was accepted.

8. We may now consider some of the judgments cited at the bar in order to appreciate the issues involved herein. In Balram Gupta vs. Union of India and Anr., 1988 SCC (L. & S) 126 the Supreme Court noted the law in so far as withdrawal of resignation is concerned. In that case the Appellant before the Supreme Court was allowed to retire voluntarily from the afternoon of March, 1981. The Appellant changed her mind before that date and by letter of

January 31, 1981 had withdrawn her notice of voluntary retirement on the ground that it was on account of persistent and personal requests from the staff members. The appellant was, however, not allowed to do so. The petition filed was dismissed, against which an Appeal was preferred. The guidelines in force in that case was, that the notice of withdrawal could be considered if the employee could show that there has been material change in the circumstances in consideration of which the notice was originally given. On the facts there, the Court held that the Appellant had shown material change in circumstances. In our opinion the issue involved there was different from the issue in our case.

. Reliance was placed then on the judgment of Shambhu Murari Sinha vs. Project & Development India Ltd., & Anr., (2002) 3 SCC 347. In that case also the Appellant had applied for voluntary retirement under the Scheme of Voluntary Retirement. That was accepted with certain directions. By a further letter the Appellant sought to withdraw her option under the scheme. No reply was received from the employer and the appellant was relieved from service with effect from 26th September, 1997. The Appellant did not succeed before the High Court, Appeal was preferred before the Supreme Court. The Supreme Court therein held that if the employee considering the relevant scheme had withdrawn his proposal for voluntary retirement

before the relationship of employer and employee came to an end it was open to such an employee to withdraw his application for voluntary retirement under the scheme. The Court on the facts of that case allowed the Appeal on the ground that acceptance letter was conditional and issued consequential directions.

. In Srikantha S.M. vs. M/s.Bharath Earth Movers Ltd., 2006 (1) S.C.Services Law Judgments, 24, the Appellant before the Supreme Court had tendered resignation on 4th January, 1993 which was accepted and the same was informed to the appellant on the same day. Another letter was issued informing that casual leave had been sanctioned from 5th January, 1993 to 13th January, 1993 and that the appellant be relieved after office hours of 15th January, 1993. The appellant sent letter of withdrawal of his resignation on 5th January, 1993, attended the office and was allowed to work there. The Supreme Court considering its earlier judgments, held that once the appellant had given letter of withdrawal of his resignation before being relieved it had to be acted upon by the company.

. State Bank of Patiala vs. Phoolpati, 2005 (3) SCC 88 was an Appeal preferred by the bank against the judgment of the Punjab & Haryana High Court. The respondent there on 7th January, 2002 submitted his resignation with a request to accept it with effect from 1st March, 2002 which was

received by the bank on 8th January, 2002. On 4th February, 2002 the appellant sought to withdraw the resignation on the ground that when he gave the letter of resignation he was seriously ill, being mentally disturbed. The bank informed him to provide supporting documents and if not submitted would relieved him from the bank service. No document was submitted. On the contrary another letter was received on 4th March, 2002 reiterating his prayer for accepting his resignation. That was accepted and was relieved on 5th March, 2002. He expired on 8th June, 2002. The admitted service benefits were paid on 12th August, 2002 by the respondent. A petition thereafter came to be filed by the legal heirs. While allowing the Appeal filed by the bank, the Court noted the sequences of events of resignation and withdrawal and the opportunity given to the respondent to produce documents. Further the service benefits were accepted by the respondent and consequently the appeal of the Bank was allowed.

9. In our opinion there can be no dispute with the legal principles and law. The question is of applying the facts to the present case. Admittedly there is a dispute as to whether letter of withdrawal was received on 29th December, 1999 by the employer or on 3rd January, 2000. Does mere receipt in the registry of the employer, but not put up before the appointing authority, before the decision was taken accepting the resignation, have a bearing on the case,

atleast on the relief to be granted. The tribunal has recorded inconsistent findings. Secondly, the employee on the date of acceptance of the letter of resignation was on sanctioned leave till 23rd January, 2000. The notice period in terms of the the service regulations had not expired. The learned Tribunal has not recorded any finding on these aspects of the matter. The learned tribunal has also not taken into consideration the fact that the petitioner accepted all the service benefits and did not protest about the acceptance of the resignation and on the contrary was demanding interest on the same. The plea of the employee that the letter of resignation was under disturbed state of mind was after the benefits due had been paid. Yet another relevant fact to be considered whilst considering the relief was the transfer of all employees of the employee to B.S.N.L. w.e.f. 1.10.2000 another organisation. In our opinion these aspects were very much relevant, for the Tribunal whilst considering the reliefs prayed for and would have a bearing on the ultimate relief to be granted, if any. Courts whilst considering such matters have to take into consideration all such facts. Equitable considerations must be weighed before granting the relief of reinstatement. Would grant of compensation be an adequate relief considering the events and passage of time is another important aspect to be taken into consideration before passing an order of reinstatement. The Tribunal did not address itself to those questions.

10. In the light of what we have stated, the impugned order of the Tribunal is set aside. The matter is remanded to the Tribunal to rehear the parties including answering the issues that have been set out in this order and thereafter to pass appropriate orders.

. Rule made partly absolute in both the petitions. In the circumstances of the case there shall be no order as to costs.

(**R.V. MORE,J).** (**F.I. REBELLO**,J.)